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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,461	05/24/2004	Mary J. Benson	BENS-004	8839

7590 02/22/2006

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EXAMINER

FIDEI, DAVID

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/733,461	Applicant(s) BENSON, MARY J.	
	Examiner David T. Fidei	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/9/2003</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Priority

1. The identifying data of all prior applications for which benefits are claimed should be reviewed by the examiner to ensure that the data is accurate and provided in either the first sentence(s) of the specification or in an application data sheet. See 37 CFR 1.78(a) and MPEP § 201.11.

In the present application the continuity data in the first sentence is incorrect as the prior application is now abandoned.

It is also pointed out the effect filing date of the subject matter added to the present application from that previously filed is May 24, 2004.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 12 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis (Patent no. 6,957,791). A toilet plunger system is disclosed in as much as is claimed comprising a defined by tube 14 having a lower plate 102, a strap defined by the outer surface of the handle 58 and a cover 98.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 12, 13, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stinson (Patent no. 4,273,392) in view of Derwent ACC-NO 2003-619649. A cabinet system is disclosed having a base generally designed by canister 22. This base includes a lower plate and an extended portion extending upwardly from an upper surface of the lower plate, see figure 3 examiner's notation. A cover 24 is removably attachable about the extended portion of the base. The difference between the claimed subject matter and Stinson resides in a strap attached to the base.

Derwent discloses a cylindrical container 10 having a closure 13 and teaches the addition of a carrying strap 14. It would have been obvious to one skilled in the art at the time the invention was made to modify the base by attaching a strap as suggested by Derwent #14, in order to facilitate carrying of the device.

As to claim 12, the extended portion comprises an upper opening. The cover 24 has a lower lip that fits within the upper opening of the extended portion of the base, see figure 2 examiner's notation.

As to claim 13, the cover is comprised of a flat structure as shown in figure 3.

As to claim 14, a handle 26 is attached to the upper end of the cover.

As to claim 17, the lower plate has a flat structure as shown in figure 3.

6. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kent (Patent no. 6,038,709) in view of Derwent ACC-NO 2003-619649. A cabinet system is disclosed comprising a base 16 having lower plate 20 and an extended portion 21 extending upwardly from an upper surface of the lower plate, see figure 4 examiner's notation. A cover 17/117 is

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removably attachable about the extended portion of the base. The difference between the claimed subject matter and Stinson resides in a strap attached to the base.

Derwent discloses a cylindrical container 10 having a closure 13 and teaches the addition of a carrying strap 14. It would have been obvious to one skilled in the art at the time the invention was made to modify the base by attaching a strap as suggested by Derwent #14, in order to facilitate carrying of the device.

As to claim 2 and 3, the cover is comprised of an elongate tubular portion 18 that has an enclosed upper end and an open lower end.

As to claim 4, this tubular portion also provides a handle attached to the upper end of the cover.

As to claim 5, the cover has a lower end positionable about the extended portion as shown in figure 6.

As to claims 6 and 7, the base includes a support portion 20, which has an X-shape, see figure 3.

As to claim 8, the cover has a body portion 135 expanding what may be considered an upper end and lower end, see figure 6.

As to claim 9, the lower base plate 20 has a flat structure.

Kent also discloses an overlay 315 in figure 8 that may be considered a cover in the same vein as member 17/117.

As to claim 10, it would have been an obvious matter of design choice to make the component any size desired, such as three inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. § 2144.04 IV.

As to claim 11, the extended portion and cover have similar cross sectional shapes.

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7. Claims 1, 12, 13, 14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polito (Pub No. US 2003/0173243 A1). A cabinet system is disclosed comprising a base generally designed by canister 20 having lower plate and an extended portion extending upwardly from an upper surface of the lower plate, see figure 2 examiner's notation. A cover 21 is removably attachable about the extended portion of the base. The difference between the claimed subject matter and Stinson resides in a strap attached to the base.

Derwent discloses a cylindrical container 10 having a closure 13 and teaches the addition of a carrying strap 14. It would have been obvious to one skilled in the art at the time the invention was made to modify the base by attaching a strap as suggested by Derwent #14, in order to facilitate carrying of the device.

As to claim 12, the extended portion comprises an upper opening. The cover 21 has a lower lip that fits within the upper opening of the extended portion of the base, see figure 2 examiner's notation.

As to claim 13, the cover is comprised of a flat structure as shown in figure 2.

As to claim 14, a handle 26 is attached to the upper end of the cover.

As to claim 17, the lower plate has a flat structure as shown in figure 2.

As to claim 18, a spherical decorative knob 22 is disclosed.

8. Claims 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art [Stinson (Patent no. 4,273,392) , Polito (Pub No. US 2003/0173243 A1) and of Derwent ACC-NO 2003-619649] as applied to claim 12 above, and further in view of Dunagan et al (Patent no. 6,267,461). The difference between the subject matter of claim 15 and the prior art resides in the cabinet system including a hinge pivotally connected between the cover and the extended portion.

Dunagan et al discloses a container system where a cover 34 is hinged to a body portion 16 as is conventionally known to those skilled in the container art. It would have been obvious to one of ordinary skill in the art to modify the prior art system by including a hinge pivotally connected between the cover and extended portion as taught by Dunagan, in order to keep the cover associated with the system and prevent its loss.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

9. “In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant’s or patent owner’s reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)”, see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner’s action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. “Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based

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on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The Official Fax number to file responses to this Office Action is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei
Primary Examiner
Art Unit 3728

dtf
February 21, 2006